Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
Petition of the)	CC Docket No. 99-200
Connecticut Department of Public Utility Control)	
For Authority to Conduct a Transitional)	NSD File No. L-02-03
Service Technology Specific Overlay Trial)	
In Connecticut	ĺ	

To: Common Carrier Bureau

COMMENTS OF VERIZON WIRELESS

I. Introduction

Verizon Wireless respectfully requests that the FCC dismiss or deny the Connecticut Department of Public Utility Control's ("DPUC") petition for authority to implement service technology specific overlays, without prejudice. The DPUC has failed to demonstrate compliance with, and in some instances has not even addressed, standards that are predicates to a grant of such authority. Verizon Wireless urges the DPUC to refile its petition as soon as possible, so that area code relief, whether in the form of a transitional overlay or an all-services overlay, can be implemented in time to meet the numbering needs of all carriers and consumers in Connecticut. If the FCC does not dismiss this petition as deficient, Verizon Wireless reserves the right to file supplemental comments to address the merits of the petition.

Verizon Wireless commends the DPUC for proposing a solution for numbering relief in Connecticut. Notably, the DPUC was the only state commission to embrace a

transitional proposal after the wireless industry offered to participate in a transitional "phased-in" service specific overlay ("PIO") in late 2000. However, given the lapse in time since the PIO was proposed and the requirement that wireless carriers be capable of number pooling by this November, Verizon Wireless is skeptical that the costs associated with implementing a Service Overlay ("SO") at this time would outweigh the benefits. It is critical, therefore, that any state that proposes an SO, particularly one that would segregate wireless carriers into separate area codes after wireless carriers are capable of pooling numbers with landline carriers, comply with the standards delineated in the FCC's recent (Third Report and Order on Numbering Resource Optimization ("Third Report and Order"). The DPUC's petition, as presently written, cannot be granted because it does not meet a number of standards that the Commission has said must be met before it can determine whether imposing an SO would be in the public interest.

Verizon Wireless has endorsed creating an additional area code relief tool for states that does not violate applicable law or compromise fairness by discriminating against certain services or taking back critical numbering resources from consumers. To this end in November 2000, Verizon Wireless and other wireless carriers submitted a proposal for phased-in area code relief.² In addition to providing an additional tool to the states, the "phased-in overlay" ("PIO") proposal was designed to optimize numbering resources, help carriers gain access to numbers when needed, and avoid unreasonable discrimination and take-backs.

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Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, FCC 01-362, released December 28, 2001 ("Third Report and Order"). In commenting on this petition, Verizon Wireless is not waiving any rights to appeal or seek reconsideration of the Third Report and Order.

See Letter from Anne E. Hoskins, Verizon Wireless, to Yog R. Varma, Deputy Chief, Common Carrier Bureau, dated November 21, 2000.

Verizon Wireless supported adoption of PIOs in its comments and reply comments to the *Second Further Notice of Proposed Rulemaking* ("*Second Further Notice*").³ Specifically, the elements of the PIO proposal included: 1) no take-backs of existing customers' numbering resources; 2) transitional, non-permanent segregation of certain services or technologies; 3) implementation only where pooled numbers will be available for landline customers by the time non-pooling capable carriers begin taking numbers from the PIO;⁴ 4) a defined trigger whereby the PIO would transition into an all-services overlay when wireless carriers are pooling capable; and 5) temporary waiver of the ten digit dialing rule.

Verizon Wireless urges the DPUC to provide significantly greater detail in a supplemental filing concerning exactly what services would be included in the SO, what services would be subject to number take-backs, and the extent to which pooling-capable wireless carriers would be able to participate in number pooling in the 203 and 860 NPAs. It is only after such information is submitted that interested parties and the FCC can make informed determinations about the costs and benefits of imposing service specific overlays in Connecticut. Conversely, granting the DPUC's incomplete petition would violate the clear terms of the *Third Report and Order*.

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Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd. 306 (2000). See Comments of Verizon Wireless, filed February 14, 2001 and Reply Comments of Verizon Wireless, filed March 7, 2001.

At the time of the PIO proposal, wireless carriers would not be capable of participating in thousands block number pooling ("TBNP") for 2 years. Wireless carriers are now scheduled to begin pooling in nine months. TBNP works best when all participants can share numbering resources within the pool. There would be little number efficiency achieved if wireless carriers are forced to undergo the costs of TBNP and then are segregated into an NPA where they cannot utilize stranded landline numbers.

II. The Petition Must Be Dismissed Without Prejudice Because the DPUC Failed to Address Multiple Standards as Required in the Third Report and Order

In the *Third Report and Order*, the FCC departed from strong Commission precedent prohibiting the use of service or technology specific overlays by enabling states to implement SOs if they can meet tightly prescribed standards. Given that the Commission has found repeatedly that service or technology specific overlays can have discriminatory impacts if they segregate certain types of services or carriers, require number take-backs or create dialing disparities⁵, the FCC must enforce its new case-by-case standards strictly. The DPUC failed to address the FCC's own standards relating to the technologies and services that would be included in the SO, the trigger for phasing the SO into an all-services overlay, and the application of take-backs and ten-digit dialing. Without that information, the petition is deficient.

A. Technologies and Services to be included in the SO

In the *Third Report and Order*, the FCC concluded that state commissions seeking delegated authority should "provide specific information on which technologies and services will be placed in any proposed SO." The DPUC's petition, however, does not provide any description of which services would be served out of the SO. For example, it is unclear whether pooling-capable wireless carriers will be allowed to take number assignments from thousands blocks in the 203 and 860 NPAs once they become pooling capable in November 2002.

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See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596, 4604-08, ¶ 20 (1995) ("Ameritech Order"); see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19508, 19518 (1996) ("Second Local Competition Order") (holding that a service-specific overlay proposed by the Texas Public Utilities Commission violated the Ameritech Order).

The petition also does not identify which services would be considered "nongeographic," and potentially subject to number take-backs. ⁷ This is a critical question because the FCC itself has erred in citing a leading telematics service provider, Onstar, as an example of a non-geographic service provider.⁸ In fact, in-vehicle telematics devices, such as those used by OnStar, are increasingly geographically sensitive. As part of these services, customers are provided telephone numbers that they can use to both make and receive personal calls. The personal calling feature employed by OnStar provides a geographically based number that is keyed to the customer's home or business NPA. Verizon Wireless provides OnStar with telephone numbers as needed, and manages those numbers as it does for other resellers. Permanent SOs that include take-backs of numbers from users of in-vehicle telematics devices would cause the same customer inconveniences associated with forced area code changes for other CMRS subscribers. The telematics situation provides an instructive example of the dangers of pigeon-holing wireless technologies and services, which are evolving constantly to meet consumer demands, into categories that would yield discriminatory and competitively damaging numbering assignments.

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Third Report and Order, ¶82.

In paragraphs 82-92, the FCC states that it would disfavor certain features of SO proposals except as applied to non-geographically sensitive services.

Third Report and Order, ¶ 74. The Commission specifically names OnStar as an example of non-geographically sensitive services in footnote 201.

See Ex Parte Letter from William L. Ball, OnStar, to William F. Caton, Acting Secretary, FCC, dated February 14, 2002.

B. When the SO will be Implemented and the Transitional Trigger

In the *Third Report and Order* the FCC concluded, "SOs should not be implemented when the underlying NPA has a projected lifespan of less than one year." ¹⁰ The DPUC failed to address the remaining life of the 203 and 860 NPAs. Based on recent NANPA/NeuStar data, both the 203 and 860 NPAs will exhaust in less than one year. ¹¹ In January 2002, NeuStar informed the DPUC that the 203 NPA is projected to exhaust in February 2003 and the 860 NPA is projected to exhaust in April 2002. ¹² To comply with the *Third Report and Order*, the DPUC must submit data demonstrating that the 203 and 860 NPAs have remaining lives beyond February 2003.

The FCC also set a clear standard for segregating pooling capable wireless carriers into separate area codes from pooling capable landline carriers. The FCC concluded:

If state commissions propose a transitional SO that segregates non-pooling carriers into the SO NPA, they bear the burden of demonstrating why the transition should not occur when wireless participation in pooling commences. State commissions should, in all instances, indicate which of these transition triggers they propose to use, and explain how the proposed transition mechanism meets our numbering resource optimization goals and equitably balances the interests of affected carriers and consumers in their proposal for transitioning SOs to all services overlays. ¹³

It appears that the DPUC is proposing to segregate pooling capable wireless carriers indefinitely into an SO by employing an exhaust–based trigger.¹⁴ The DPUC has

See letter from Kimberly Wheeler Miller, Regulatory Policy Counsel, NeuStar, Inc. to Louise Rickard, Acting Executive Secretary, Connecticut DPUC, January 14, 2002.

Third Report and Order, ¶85.

In December 2001, 42 NXX Codes remained in the 203 NPA and 30 NXX codes remained in the 860 NPA.

Third Report and Order, ¶87.

See Petition of the Connecticut Department of Public Utility Control for Authority to Implement a Transitional/Technology-Specific Overlay in Connecticut, filed January 18, 2002, at 7, proposing to use the

not explained how an exhaust-based trigger would "equitably balance the interests" of wireless carriers and customers, nor how impeding pooling-capable wireless carriers from utilizing stranded CLEC and LEC numbers in the 203 and 860 NPAs would be consistent with the FCC's numbering resource optimization goals.

C. Take-backs

The *Third Report and Order* sets a stringent standard for ensuring that the costs associated with any proposed number take-backs are justified by tangible consumer benefits. Specifically, state commissions must "include a strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs." Additionally, state commissions are required to demonstrate in their petitions that the negative effects of take-backs will be mitigated by the benefits in the particular area by making specific showings, such as wireless consumer support for take-backs, provision of state incentive to facilitate take-backs, and a phased-in approach to ease consumer and provider burdens. In identifying these factors, the FCC acknowledged that take-backs can be very costly and burdensome for both carriers and customers. The DPUC's petition must be dismissed or denied because it does not address any of these factors when mentioning, almost in passing, that it might impose take-backs on "non-geographic" services (which, as discussed above, are not defined in the petition).

exhaust of the underlying codes as the trigger for transitioning the SO to an all-services overlay and then concluding that the lives of the underlying NPAs would be "extended indefinitely."

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Third Report and Order, ¶90.

¹⁶ *Id*.

D. Ten-digit Dialing

The *Third Report and Order* also requires any state commission that seeks a waiver of the ten-digit dialing requirement to indicate when the requested waiver would terminate.¹⁷ It is unclear from the petition whether the DPUC is seeking a waiver of this rule. If it is, the DPUC must ask for a waiver directly and be held to the same standards applied by the FCC in other ten digit dialing waiver petitions. ¹⁸ The FCC has found repeatedly that ten-digit dialing is an essential element for ensuring that carriers served out of any overlay NPA are not placed at a competitive disadvantage with carriers served out of the original NPA.¹⁹ To the extent the DPUC may seek to impose a permanent dialing disparity on wireless carriers, that proposal would violate applicable FCC precedent.

III. Conclusion

For all of the reasons identified above, the FCC should dismiss or deny the DPUC's petition for authority to impose service specific overlays in Connecticut. Verizon Wireless urges the DPUC to amend and re-file its petition consistent with the standards delineated in the *Third Report and Order*. Given the need for area code relief in Connecticut, Verizon Wireless urges the FCC to set an expedited public comment cycle if the DPUC files an amended petition.

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¹⁷ Third Report and Order, ¶92.

See In the Matter of Illinois Citizens Utility Board, Motion for Stay of 47 CFR § 52.19(c)(3)(ii). CC Docket No. 96-98, DA 02-7, released January 4, 2002, citing Second Local Competition Order at 19518-19; see also New York & Pub. Serv. Comm'n of New York v. FCC, 267 F.3d 91 (2d Cir. 2001) (upholding FCC denial of 10-digit dialing rule waiver). Id.

Respectfully submitted,

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